

## ADMINISTRATION OF FEDERAL EMPLOYEE LEAVE SYSTEM

SEPTEMBER 10, 1973.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Mr. WALDIE, from the Committee on Post Office and Civil Service,  
submitted the following

### REPORT

[To accompany H.R. 1284]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 1284) to amend title 5, United States Code, to improve the administration of the leave system for Federal employees, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

### AMENDMENTS

The amendments are as follows:

- (1) On page 2, line 1, strike out "subchapter 1" and insert in lieu thereof "subchapter I".
- (2) On page 2, line 2, strike out "to this title" and insert in lieu thereof "of this title".
- (3) Beginning on page 4, strike out line 7 and all that follows down through line 22 on page 5, and insert in lieu thereof the following:

SEC. 5. With respect to a former employee (except a former employee under section 6 of this Act) who is not on the rolls on the date of enactment of this Act, annual leave which accrued after June 30, 1960, but, because of administrative error, was lost by operation of section 6304 of title 5, United States Code, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within three years immediately following the date of enactment of this Act, with the agency by which he was employed when the lump-sum payment provisions of section 5551 of title 5, United States Code, last became applicable to him. Payment shall be by that agency at the salary rate in effect on the date the lump-sum payment provisions became applicable.

SEC. 6. (a) With respect to a former employee of the Post Office Department or a former employee of the United States Postal Service who had prior civilian service with the Post Office Department or other Federal agency, who is not on the rolls on the date of enactment of this Act, annual leave which accrued after June 30, 1960, and before July 1, 1971, but, because of administrative error was lost by operation of section 6304 of title 5, United States Code, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within three years immediately following the date of enactment of this Act with the Postal Service. Payment shall be by the Postal Service at the salary rate in effect on the date the lump-sum payment provisions of section 5551 of title 5, United States Code, or comparable provisions of regulations of the Postal Service, as appropriate, last became applicable to the former employee.

(b) With respect to a present employee of the Postal Service who had prior Federal civilian service with the Post Office Department or other Federal agency, annual leave which accrued after June 30, 1960, and before July 1, 1971, but, because of administrative error was lost by operation of section 6304 of title 5, United States Code, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within three years immediately following the date of enactment of this Act with the Postal Service. Payment shall be by the Postal Service at the salary rate in effect on the date of enactment of this Act.

#### EXPLANATION OF AMENDMENTS

Amendments numbered (1) and (2) make purely technical corrections in the language of H.R. 1284, as introduced.

Amendment numbered (3) is a technical amendment which was suggested by the Civil Service Commission in its report on this bill.

The purpose of this amendment is to clarify which agency is responsible for making the payments authorized under sections 5 and 6 of the bill and to clarify which salary rate shall be used as the basis for such payments.

The amendment does not alter the substance of sections 5 and 6 as they appear in the introduced bill.

#### PURPOSE

The major purposes of H.R. 1284 are to—

1. allow employees to accumulate leave over and above current maximums if leave was lost through no fault of their own through administrative error, exigencies of public business, or illness;
2. provide for improved administration of the leave system by allowing employees to take leave during the first 90 days of employment, provide for lump-sum payment for leave over present maximums in the year of an employee's separation, and add new provisions for repayment for over-credit of leave; and
3. correct inequities in the accumulation of leave of civilian employees of the Federal Government who are missing in action.

#### COMMITTEE ACTION

No hearings were held on this legislation during this session of the Congress. However, during the 92d Congress, hearings were held on similar legislation (H.R. 12602), which passed the House by unanimous consent (committee hearing No. 92-32). The Senate did not take action on H.R. 12602.

H.R. 1284 was approved by the Subcommittee on Retirement and Employee Benefits by a unanimous voice vote and the full committee ordered the bill, as amended, favorably reported by a unanimous voice vote.

#### SUMMARY

The first section of the bill removes the 30-day maximum credit for lump-sum leave payment purposes to allow an employee to receive lump-sum payment during the year of his separation for leave earned during that year above the current maximum carryover limitations, and for leave which was lost and subsequently restored under section 3.

Section 2 allows an employee whose employment is not limited to less than 90 days to take earned leave during the first 90 days of employment.

Section 3 would allow crediting of leave in excess of current maximums if leave was lost unavoidably through administrative error, exigencies of public business, or illness. In cases of administrative error, restitution would be retroactive to June 30, 1960. In cases of exigencies of public business and illness, annual leave would have to be scheduled in advance before the provisions of the bill would go into effect.

Leave lost and restored for these reasons would be placed in a separate leave account, the use of which would be governed by Civil Service Commission regulations.

Section 4 would allow an employee to whom excess leave has been erroneously credited to pay back the leave by lump sum, installment payments, or by charging it against future earned leave.

Section 5 provides that the retroactive feature for leave lost through administrative error will also apply to former employees provided that a claim is filed for or by the employee.

Section 6 provides the same retroactive feature for present and former employees of the Postal Service for leave which accrued after June 30, 1960 and prior to July 1, 1971 when the Postal Service was established.

Section 7 allows civilian employees of the Federal Government who are missing in action to receive payment for accumulated leave over and above current statutory maximums.

#### STATEMENT

H.R. 1284 makes several changes in the administration of the leave system covering more than 2 million Federal employees and corrects several minor long-standing inequities. The bill does not alter the formula by which annual leave is accrued.

Several of the problems which H.R. 1284 is designed to solve arise from provisions of law which limit the amount of leave an employee

may carry over from one leave year to the next. For domestic employees, the maximum carryover is 30 days, and for employees serving abroad, it is 45 days. Thus if an employee is carrying his full 30-day maximum and fails to use leave accruing during a particular leave year, he loses those days which he does not use.

In most cases, the employee chooses on his own volition not to use the leave and therefore he should not be allowed credit for the unused leave. However, in cases where leave is lost through no fault of the employee, the committee feels that present carryover limitations result in an inequity for the employee.

According to testimony, employees most often lose leave because of administrative error, exigencies of public business, or sickness during a time when annual leave is scheduled. Also, employees who are prisoners of war or missing in action obviously cannot use accrued leave.

Leave lost through administrative error is the most obvious example of the injustice caused by the otherwise acceptable maximum limitations. In some cases, the employee himself is unaware of the amount of leave to which he is entitled. Therefore, an administrative error may be perpetuated for years. When the error is finally discovered, the employee has no choice but to forfeit the leave to which he would have been otherwise entitled if, in the meantime, he has built his leave up to his maximum carryover.

Clearly, justice would dictate that an employee should not suffer because of official error.

The questions of exigencies of public business and sickness are no less compelling to the committee. If an employee has a reasonable expectation that he can take accrued annual leave and that leave is subsequently denied because he cannot be spared, then the employee should have an opportunity later to use that leave regardless of current maximum limitations. One illustration of this problem is involved in a Comptroller General's decision which is set forth below.

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., September 18, 1969.*

B-167853.

Mrs. ETHELREDA C. FESMIRE,  
*Authorized Certifying Officer,  
National Labor Relations Board.*

DEAR MRS. FESMIRE: We refer to your letter of September 5, 1969, requesting our decision concerning the propriety of certifying for payment a payroll voucher covering annual leave to the credit of an employee which was forfeited by the expiration of the temporary appointment under which he was serving.

The pertinent facts are related in your letter as follows: A hearing examiner of the National Labor Relations Board reached the mandatory retirement age of 70 on September 30, 1965. Because at the time he was working on a difficult case he was requested to remain on duty and continue the case. The employee continued on duty under temporary appointments and on April 1, 1969, the Civil Service Commission authorized a temporary appointment not to exceed July 29, 1969, except that he could be separated earlier at the will of the appointing officer or at the disposition of the case to which he was currently

assigned, whichever occurred first. In accordance with the terms of the authority granted by the Civil Service Commission the employee finally was separated on July 29, 1969, at which time he had 112 hours annual leave to his credit which could not be included in a lump-sum payment. You now want to know whether he may appropriately be paid for such leave apparently be extension of his separation date or otherwise.

We understand that the 112 hours represented current accrued leave in excess of the maximum amount authorized to be included in his lump-sum leave payment.

5 U.S.C. 5551 is in part as follows:

"(a) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, who is separated from the service or elects to receive a lump-sum payment for leave under section 5552 of this title, is entitled to receive a lump-sum payment for accumulated and current accrued annual or vacation leave to which he is entitled by statute. The lump-sum payment shall equal the pay the employee or individual would have received had he remained in the service until expiration of the period of the annual or vacation leave, except that it may not exceed pay for a period of annual or vacation leave in excess of 30 days or the number of days carried over to his credit at the beginning of the leave year in which entitlement to payment occurs, whichever is greater. The lump-sum payment is considered pay for taxation purposes only."

The quoted statutory provision makes no exception to the application of the limitation contained therein on the amount of leave for inclusion in a lump-sum payment even though the exigencies of the service and/or the limitations on an employee's appointment prevent him from taking annual leave in kind such as here.

Moreover, since the employee actually was separated as required by the terms of his appointment, we are aware of no basis upon which such period of employment now may be extended to include the leave which could not be included in the lump-sum payment.

We note that there presently is pending in the House of Representatives a bill, H.R. 282, 91st Congress, which would permit employees to be paid for annual leave which otherwise is forfeited by reason of the lack of opportunity for, or inability of, such officer or employee to use the leave because of the exigencies of the public business. However, the bill does not contain any retroactive provision. See also H.R. 16890, 90th Congress; S. 1543, 90th Congress; H.R. 5947, 89th Congress and similar bills in prior Congresses.

Accordingly, the voucher, which is returned herewith may not be certified for payment.

Sincerely yours,

R. F. KELLER,

(For the Comptroller General of the United States).

If an employee becomes ill during or prior to scheduled annual leave, we feel that he should be able to use that leave at a later date. The Civil Service Commission argues that an employee may use annual leave while he is sick in order to avoid loss of annual leave. However, this argument ignores the basic purpose of annual leave which is to give an employee time for vacations or other purposes not related to illness.

To ease the administration of the above two provisions, the bill contains provisions that annual leave must have been scheduled in advance in order for lost leave to be credited. This would be subject to Civil Service Commission regulations, and the committee feels that the regulations should be liberal. All that should be required is that the employee make a bona fide, formal, and timely request for leave and that the request be approved.

The Civil Service Commission suggested that language be added to H.R. 1284 that an employee must request leave by November 1 of any year in order to be eligible for recrediting if leave is lost due to exigencies of public business or sickness. The committee feels that specific provisions of this nature should more properly be the subject of regulation. While the committee does not oppose the concept of a cut-off date for this purpose, we do feel that the Commission proposal is too restrictive. A December 1 cutoff date would be fairer and more realistic.

The committee does not want to establish a precedent for the eventual elimination of the present maximum carryover of leave. This limitation has a beneficial effect in that it encourages employees to use leave rather than hoard it. Therefore, the bill provides that leave lost and recredited through the provisions of the bill will be credited to a special leave account the use of which will be governed by Civil Service Commission regulations. If the leave is not used and the employee leaves the service within the time limits prescribed by the Commission, the employee would receive lump-sum payment. It is expected that regulations will be drawn designed to encourage employees to use leave in the special account if possible and feasible. However, no regulation should be drawn which in itself might prevent the use of current accrued leave. The Commission also should allow ample time, perhaps 2-3 years, for an employee to use leave credited to the special account.

The bill also provides for lump-sum payment for leave accrued above current maximums during the year of the employee's separation. Section 5551(a) of title 5 now limits this lump-sum payment to 30 days, unless an employee is carrying leave in excess of such maximum under prior legislation. This limitation is repealed by this bill.

During the final year of separation, an employee may earn as much as 26 days of annual leave. Under current law, if the employee has 30 days of accumulated leave he must use these 26 days or lose them. This gives rise to numerous situations where employees take extended periods of leave just prior to the date of separation. This in turn causes administrative difficulties since a vacancy is not created until an employee is actually off the rolls. This provision would eliminate the necessity of an employee in this circumstance to use his leave or lose it.

Another provision of the bill allows employees whose appointments are not limited to less than 90 days to take earned leave during their first 90 days of their employment. Currently, section 6303(b) of title 5 prevents this. This provision would in no way increase the amount of leave a new employee could earn during his first year. However, it has often been noted that new employees frequently have to find lodging, move furnishings, apply for licenses, and do many other things connected with moving and the taking of a new job. Allowing em-

ployees to take leave during the first 90 days would reduce this hardship at no cost to the Government.

Another section of H.R. 1284, proposed by the Civil Service Commission, would allow an employee to whom excess leave has been erroneously credited to pay back the leave by lump sum, installment payments, or by charging it against future earned leave. Currently, unless payment is waived, an employee is required to repay in lump sum unless current leave is available.

The provisions allowing civilian employees who are missing in action during the period since January 1, 1965, to receive payment for leave accumulated over current maximums is manifestly just. These employees who have sacrificed a significant part of their lives obviously cannot take leave which they accrue. There are 15 employees who are in this category. They continue to draw all pay and benefits to which they would normally be entitled. The law establishing maximum carryover limitations for annual leave clearly did not contemplate employees in this status.

During the 92d Congress the committee considered and rejected an amendment to include current employees of the Postal Service in H.R. 12602. The majority of the committee felt that the details of the Postal Service's leave system should continue to be a subject of collective bargaining as contemplated by the Postal Reorganization Act of 1970. However, it is the opinion of the committee that the retroactive feature with regard to annual leave lost through administrative error should apply to former employees of the Post Office Department and current employees of the Postal Service who lost leave which accrued prior to the creation of the Postal Service on July 1, 1971. To insure that current or former employees of the Postal Service are treated fairly, the committee has included provisions that such employees would be eligible for payment for leave lost through administrative error in any department or agency provided that the leave was accrued between July 1, 1960, and June 30, 1971.

In connection with these provisions, which appear in the amended section 6 of the bill, the Postal Service requested that language be included in the bill to specify that the lump-sum payments to former Post Office Department employees should be made out of moneys in the Treasury not otherwise appropriated. In support of their request, the Postal Service referred to section 2002(a)(2) of title 39, United States Code, which provides that "all liabilities attributable to operations of the former Post Office Department shall remain liabilities of the Government of the United States \* \* \*."

It is not clear whether the provision cited above is applicable to the liability created by this act, since section 1005(e) of title 39 provides that annual leave of employees of the Postal Service, whether accrued prior to or after commencement of operations of the Postal Service, shall be an obligation of the Postal Service. However, the committee's decision to exclude the language suggested by the Postal Service was based on the committee's belief that such language constitutes an appropriation of funds which more properly is for the consideration of the Committee on Appropriations. Since the provisions of section 6 will establish a new obligation for the Postal Service, the provisions

should be considered as a basis for the Postal Service to request an additional appropriation to cover the obligation.

#### SECTION ANALYSIS

Subsection (a) of the first section of the reported bill amends section 5551(a) of title 5, United States Code, to authorize a lump-sum payment for all of the annual leave standing to the credit of an employee at the time of his separation from the service. Under existing law, an employee who separates from Government service or who enters on active duty in the armed services is entitled to receive lump-sum payment for the annual leave to his credit. However, that payment now is limited to 30 days of annual leave or the number of days carried over to the employee's credit at the beginning of the leave year in which entitlement to payment occurs, whichever is greater. This amendment will abolish that limitation and will have the effect of authorizing payment to the employee for all of the annual leave accrued during the year of his separation notwithstanding that the total amount of accumulated and accrued leave to the employee's credit at the time of his separation may exceed his annual leave ceiling under section 6304 of title, 5 United States Code.

Subsection (b) of the first section of the bill amends section 5551(c) of title 5, United States Code, relating to officers who are excepted from the annual and sick leave provisions of chapter 63 of title 5 by section 6301(2)(x)-(xii) of that title. This is a technical amendment which is made necessary by the preceding amendment to section 5551(a) of title 5.

Section 2 of the bill amends section 6303(b) of title 5, United States Code, to eliminate the ban on the use of annual leave during the first 90 days of employment for all employees except those with temporary appointments limited to less than 90 days. Under existing law, an employee, regardless of the nature of his appointment, may not use annual leave during the first 90 days of his service, even though he earns annual leave during that period. The amendment made by this section of the bill will allow employees with appointments of 90 days or more to be granted annual leave from the dates of their appointments.

Section 3 of the bill proposes to add a new subsection (d) to section 6304 of title 5, United States Code. Under the existing provisions of section 6304 most employees carry forward from one leave year to the next a maximum of 30 days of annual leave. Any leave in excess of 30 days which is not used by an employee before the start of the new leave year is forfeited by operation of section 6304(a) regardless of the reasons for the employee's failure to use such leave.

Generally, paragraph (1) of the new section 6304(d), as added by section 3 of the bill, provides that annual leave which is lost by operation of section 6304 because of administrative error, exigencies of the public business, or sickness of the employee, shall be restored to the employee's leave account.

With respect to annual leave lost because of administrative error, the authority to restore such lost leave includes any annual leave which accrued after June 30, 1960, but was forfeited under section 6304 of



title 5. The fact that the error may have been committed on a date prior to June 30, 1960, would not preclude the restoration of annual leave under the new subsection (d) if such error actually caused a loss of annual leave which accrued after June 30, 1960.

With respect to annual leave lost because of the exigencies of the public business or sickness of the employee, the authority to restore such leave would apply only to annual leave which was scheduled in advance of the date that the employee desired to take such leave. These provisions apply only to leave which is lost on or after the date of enactment of this act.

The committee intends that for purposes of complying with the "scheduled in advance" requirement, some formal documentation will have to be furnished to show that the employee, a reasonable time before the end of the leave year, did, in fact, request a certain amount of annual leave in advance, that such request was approved by the appropriate authority, and that such annual leave was lost due to exigencies of the service or sickness of the employee.

Paragraph (2) of the new section 6304(d) provides that any annual leave which is restored to an employee under the authority of paragraph (1) of that section and which is in excess of the employee's annual leave ceiling shall be credited to a separate leave account. The restored leave then will be available for use by the employee within reasonable time limits to be prescribed by regulations of the Civil Service Commission. Paragraph (2) further provides that in the case of an employee who separates from the service or who enters on active duty in the armed services, any leave credited under that paragraph which is unused and still available to the employee under the time limits prescribed by the Civil Service Commission shall be included in the lump-sum payment authorized under section 5551 or 5552(1), as applicable, of title 5.

With respect to employees who enter on active duty in the armed services, the annual leave credited under paragraph (2) may not be retained to the credit of the employee under section 5552(2) of title 5. The employee will be required to take a lump-sum payment for such leave.

Section 4 of the bill proposes to add a new subsection (f) to section 6302 of title 5. The new subsection (f) will permit an employee who has used excess annual leave erroneously credited by his agency to elect to refund the amount of pay received for that excess leave by lump-sum or installment payments or to have the excess leave carried forward as a charge against his subsequent annual leave earnings. Under existing law there is no authority to liquidate an annual leave deficit by charging such excess leave against future leave earnings. The authority provided under this amendment will parallel the present procedure for liquidating advanced sick leave.

Under the authority of section 5584 of title 5, an agency may, under certain conditions, waive an overpayment of pay resulting from an employee's use of erroneously credited annual leave. If the employee is granted such a waiver under section 5584, the provisions of the new section 6302(f), of course, would not be applicable.

Section 5 of the bill applies to former employees who are not on the rolls of the Government on the date of enactment of the act. The sec-

tion provides that a claim may be filed by a former employee for annual leave which accrued after June 30, 1960, but, because of administrative error, was lost by operation of section 6304 of title 5, United States Code. This benefit is similar to that granted under section 8 of the bill with respect to employees presently on the rolls. The claim must be filed with the agency by which the former employee was employed at the time the lump-sum payment provisions of 5 U.S.C. 5551 last became applicable to him and must be filed within 3 years immediately following the date of enactment of the act. The lump-sum payment for the annual leave will be made at the salary rate in effect on the date the lump-sum payment provisions lost become applicable to the employee.

Section 5 does not apply to former employees of the former Post Office Department or to former employees of the U.S. Postal Service. These employees are covered specifically under section 6 of the bill.

Section 6 of the bill, as amended by the committee, applies to employees of the U.S. Postal Service, former employees of the Postal Service, and former employees of the former Post Office Department.

Under the provisions of the Postal Reorganization Act of 1970, Public Law 91-375, employees of the Postal Service are not covered by amendments to the annual and sick leave provisions of chapter 63 of title 5. Therefore, the amendments to those leave provisions which are proposed in sections 1 through 4 of the bill would not apply to employees of the Postal Service, and the provisions of section 5 of the bill relating to former employees do not apply to former employees of the U.S. Postal Service. Also, the provisions of section 5 have been made inapplicable to former employees of the former Post Office Department who never became employees of the U.S. Postal Service. Accordingly, specific authority is provided by this section of the bill to enable employees of the Postal Service and former employees of the Post Office Department or of the Postal Service to receive payment for annual leave which was accrued after June 30, 1960, and before July 1, 1971 (the date on which such employees officially became employees of the U.S. Postal Service), but was lost because of administrative error.

Subsection (a) of section 6 applies to a former employee of the Post Office Department, or a former employee of the U.S. Postal Service who had prior civilian service with the Post Office Department or some other Federal agency, and who is not on the rolls on the date of enactment of this act.

Under this provision such a former employee is entitled to receive a lump-sum payment for annual leave which accrued after June 30, 1960, and before July 1, 1971, but, because of administrative error, was lost by operation of section 6304 of title 5, United States Code. The claim for lump-sum payment must be filed with the U.S. Postal Service within 3 years immediately following the enactment date of the act.

The lump-sum payment will be made by the Postal Service at the employee's salary rate that was in effect on the date the lump-sum payment provisions of section 5551 of title 5, or comparable provisions of Postal Service regulations (applicable to a former employee of the U.S. Postal Service) last became applicable to the former employee.

It is recognized that an employee may have received a lump-sum payment for annual leave under the provisions of 5 U.S.C. 5551 on more than one occasion. For purposes of the payment authorized under

this provision, it is the date of the employee's last lump-sum payment under either section 5551 or comparable Postal Service regulations that determines the salary rate at which such payment shall be made.

Under subsection (b) of section 6, a present employee of the U.S. Postal Service who had prior civilian service with the Post Office Department or other Federal agency is entitled to receive a lump-sum payment for annual leave which accrued after June 30, 1960, and before July 1, 1971, but, because of administrative error, was lost by operation of section 6304 of title 5. The claim for such payment must be filed with the U.S. Postal Service within 3 years immediately following the date of enactment of the act. However, under this subsection, the payment will be based on the employee's salary rate which was in effect on the date of enactment of the act.

Section 7 of the bill would amend section 5562(a) of title 5, United States Code, relating to employees in a missing status. Section 5562(a) now provides that an employee in a missing status (as defined in section 5561(5) of title 5) is entitled to receive, for the period he is in that status, the same pay and allowances to which he was entitled at the beginning of that period or may become entitled thereafter. Under existing law, however, such an employee forfeits all annual leave which he accrues in excess of the maximum leave accumulation permitted by law.

Under the amendment proposed by this section of the bill, an employee in a missing status, on or after January 1, 1965, or his survivor, would be entitled to receive payment for all annual leave which accrued on or after January 1, 1965, but which was forfeited under section 6304 of title 5, United States Code. Payment for such leave would be made at the employee's rate of basic pay in effect at the time the leave was forfeited.

#### Cost

There will be a cost saving to the Government upon adoption of the provisions of the first section of the bill which will authorize lump-sum payment for current accrued annual leave in excess of the ceiling at the time the employee is separated. Both the Civil Service Commission and the General Accounting Office report that a survey to obtain cost estimates of sections 2 through 6 of the bill could not be justified and that the cost of these sections would be minimal.

It is expected that the minimal cost of sections 2 through 6 of the bill will be more than offset by the cost savings under the first section.

Section 7, relating to leave lost by employees in a missing status, is estimated to cost \$75,000. It is impossible to estimate the additional cost for future years since the cost will depend on the number of employees in a missing status at the end of each year.

#### AGENCY REPORTS

There are set forth below the reports of the U.S. Civil Service Commission, Department of State, and Office of Management and Budget on H.R. 1284. The initial report of the Civil Service Commission, dated June 27, 1973, fully supported the provisions of H.R. 1284 with the exception of those provisions of the bill which authorized restoration of annual leave lost because of sickness or exigencies of the public business. Subsequently, the Commission advised the Committee, by

letter dated August 23, 1973, that it has withdrawn its opposition to that provision of H.R. 1284 which would permit restoration of annual leave lost because of exigencies of the public business.

U.S. CIVIL SERVICE COMMISSION,  
*Washington, D.C., June 27, 1973.*

HON. THADDEUS P. DULSKI,  
*Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further response to your request of January 18, 1973, for a report on H.R. 1284, a bill "To amend title 5, United States Code, to improve the administration of the leave system for Federal employees." Since the Commission has regulatory responsibility for the administration of this leave system, we are vitally concerned with the contents of this bill.

We heartily endorse the basic purpose of this bill and fully support most of its features, but have serious reservations about two of them, namely, restoration of annual leave lost due to sickness and to exigencies of the public business. The Commission believes that enactment of these latter provisions would seriously compromise the basic purpose of the annual leave system.

We see no need for restoration of annual leave supposedly lost because of sickness. Problems usually arise only where employees incur extended periods of illness late in the year, without having made much prior use of annual leave. Employees can avoid forfeiture of annual leave by requesting that a portion or all of any absence due to sickness be charged to annual rather than to sick leave, provided the request is made on a timely basis. It is usually just a hope that the annual leave may subsequently be taken, without realistic appraisal of whether such an opportunity will be available, which results in eventual forfeiture of annual leave. We do not believe that it is necessary or proper that this change in legislation be enacted.

The Commission also opposes any change in the law to provide restoration of annual leave supposedly lost because of exigencies of the public business. We believe that any such amendment would remove that pressure on both supervisor and employee which experience has demonstrated is necessary to ensure that leave time is effectively planned. We have no doubt that such an amendment would tend to create more inequities than it would correct. We can see the proliferation of "exigencies," which could produce complaints of collusion and discrimination. Such a provision also would generate numerous grievances and appeals. Accordingly, we urge that this provision be deleted.

If, nonetheless, this provision is retained, we believe the substitute language we are attaching will provide some degree of statutory controls and limitations. Although it might be argued that controls for this purpose could be established by regulations, the process is by no means simple, for the variety of situations to be encountered can be expected to be numerous and their significance in terms of real "exigencies" can easily vary from one agency to another. Administration by regulation would thus involve tremendous difficulties. Actually, the employing agency alone is in the best position to evaluate, in the light of existing circumstances, whether or not an exigency of the public

business prevailed at the time. The language would require that each case of leave restoration be approved by the agency head. Placing the responsibility for decision at the level of "head of agency" is not without precedent, for the Congress did just that several years ago in Public Law 90-616 by requiring decision at that level for waiver of overpayments in cases involving administrative error. Also, such action would engender a long-needed recognition by management officials of the importance of proper leave-scheduling as a part of management responsibility.

Provision is made that a claim must be filed for the restoration of leave lost because of circumstances attributed to exigencies of the public business. This not only gives the employee the right to file a claim when he feels he has been treated unfairly, but appropriate agency officials also may file in his behalf when they feel the circumstances were such as to warrant this action.

Also, a requirement has been added that may possibly assure that the employee assumes his proper share of the responsibility for use of leave. Under this provision, the lost leave would be considered for restoration only if it had originally been requested on a timely basis and a grant for its use had been refused or, if approved, subsequently revoked, and in either case it was the exigencies of the public business that prevented its use before the end of the leave year. This presumes formal documentation of the approval and scheduling of such leave. Management, of course, will still have the responsibility for assuring that employees do not approach the end of the leave year with so much leave to their credit that scheduling its use is near impossible.

In addition, with regard to Section 5 of H.R. 1284, we see inequities as well as serious administrative difficulties arising as the result of the provisions in Section 6, which are intended to cover employees of the former Post Office Department.

The intent of the retroactivity provisions is to provide, to the extent possible, for those employees who are now separated from Federal service, benefits comparable to those provided for employees currently on the rolls. For the latter, the lost annual leave would be recredited in one amount to a special leave account for subsequent use or, if separation from service occurs before there is an adequate opportunity for its use, a lump-sum payment for the remaining leave would be made at the salary rate in effect at the time of separation from service or from the leave system. For the former, all the lost leave would be restored as one amount determined as of the date the administrative error was adjusted, to be paid for at the salary rate in effect at the time a lump-sum payment would thereafter have been first available under the law, at the time of separation from service or from the leave system. The determination as to which agency is responsible for payment, and the amount to be paid, is thus simplified.

However, because of the implications of the provisions in Section 6 of the bill, the above procedures might appear to be precluded. Section 6 implies the loss of annual leave for periods of time coinciding with the employee's service in different agencies, and attempts to place responsibility for lump-sum payments on each of the particular agencies involved, at salary rates in effect at termination of employment in each of those agencies. Such a precept is contrary to the manner in which the leave laws have long operated—with loss of leave occur-

ring only at separation or at the end of the leave year, with leave being subject to transfer from one agency to another (including the former Post Office Department), and with responsibility for lump-sum payment resting with the final employing agency preceding a break in service or separation from the leave system.

With this splintering of responsibility for payment, the employee will not know where and how to file a claim. The agencies will find it very difficult to determine "Who pays what," since usually the needed records will be in the employee's personnel folder and there is only one such file. The bill's language (in Section 6) has the further inequitable effect of permitting payment at his final salary rate to an employee who remained with the same agency until separation, while requiring payment at varying rates and by different agencies for an employee who happened to transfer between agencies prior to the time the administrative error in his leave earnings was discovered.

Also, even for employees currently on the rolls in other agencies, it would require a lump-sum payment for, rather than recredit for use of, that annual leave supposedly lost during employment with the former Post Office Department; this appears contrary to a basic intent of the bill.

In addition, the present language of Section 6 will not provide for Post Office Department employees any lost leave accruals for the first six months of the 1971 leave year, as apparently is intended, since forfeiture of this leave under 5 U.S.C. 6304 could not have occurred prior to July 1, 1971, as indicated, but only as of the end of the 1971 leave year, i.e. January 8, 1972.

Since it appears the purpose of Section 6 is to provide the retroactivity feature for annual leave lost due to administrative error to present or former employees of the U.S. Postal Service and former employees of the Post Office Department, but not to exceed June 30, 1971, we believe this benefit can best be included by slight modification of the language of Section 5, rather than by introduction of additional procedures that tend to complicate its administration. This would eliminate any need for the present Section 6. We do not believe this will create any undue burden for the U.S. Postal Service; in fact, it may well result in less cost to that Service. The Postal Service specifically recommended the language which appears in the attachment, ". . . except that payments imposed by this Act on the former Post Office Department shall be made out of moneys in the Treasury not otherwise appropriated . . ."

Under the circumstances, we are attaching a proposed rewrite of Section 5 which incorporates the intent of Section 6, eliminates the technical inadequacies, is in consonance with operating principles in present leave laws, and provides for smoother and more equitable administration of the benefit being granted. The United States Postal Service has no objection to this revision.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON, *Chairman.*

U.S. CIVIL SERVICE COMMISSION,  
*Washington, D.C., August 23, 1973.*

HON. THADDEUS J. DULSKI,  
*Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is to advise you of a change in the Administration's position on H.R. 1284, a bill "To amend title 5, United States Code, to improve the administration of the leave system for Federal employees".

In our previous report of June 27, 1973, on this bill, we fully endorsed its basic purpose and many of its provisions, and we continue to support them.

We found ourselves in opposition, however, to that feature of the bill which would restore annual leave lost because of exigencies of the public business. Our opposition to this particular feature was based primarily on a belief that more effective planning and scheduling of annual leave used by management and employees was the key to solving the relatively few instances in which leave was lost for this reason, rather than legislative relief.

We continue to believe that it is essential for management and employees to take positive measures to assure that annual leave is properly scheduled to the maximum extent possible throughout the leave year. If H.R. 1284 is enacted into law, implementing regulations and instructions issued by the Commission will focus specifically on agency management's responsibility in this regard. We expect also to include whatever controls are indicated to assure that before leave may be restored, its prior use was denied because of operational demands, rather than because of poor scheduling or for other reasons.

The National Aeronautics and Space Administration (NASA) recently brought to our attention a situation in which management is unable to schedule annual leave use for many employees because of urgent mission requirements. These employees are involved in the launch and flight operations of manned space missions in the Skylab Program. Because their services are urgently required for such duties all during leave year 1973, many employees will forfeit some and some will forfeit most of their annual leave because it cannot be scheduled for use.

The space mission demands confronting NASA management at this time is illustrative of the kind of situation that may arise which precludes granting all of the annual leave employees might otherwise take to avoid forfeiture. While these kinds of situations occur infrequently, they can develop in other agencies.

For this reason, we now believe it desirable to have general statutory authority available to permit the restoration of leave that could not be used because of operational demands. Accordingly, we are withdrawing our opposition to that feature of the bill which would restore annual leave which was scheduled in advance but was lost because of true exigencies of the public business.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON, *Chairman.*

DEPARTMENT OF STATE,  
Washington, D.C., June 26, 1973.

HON. THADDEUS J. DULSKI,  
*Chairman of the Post Office and Civil Service Committee, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In further reference to your letter of April 2, 1973, we submit the following views on H.R. 1284, a bill to improve the administration of the leave system for Federal employees.

The Department is principally interested in section 7 of H.R. 1284 which would authorize payment to civilian employees for leave they are required to forfeit while interned by a hostile force, held captive by terrorists, or otherwise counted in a missing status anywhere in the world. Leave is forfeited because employees in such circumstances obviously cannot take leave and they are limited by 5 U.S.C. 6304 on the amount of annual leave that they may accumulate.

The amendment would be effective January 1, 1965 in order to benefit the 15 civilian employees, or their survivors, who were, or are believed to have been captured and imprisoned in the recent conflict in Southeast Asia. The estimated total cost of payments under this provision to these 15 employees or their survivors is \$75,000.

The Department believes that this is a well deserved benefit for employees who have been called upon to make such an extraordinary sacrifice—one, Foreign Service officer Douglas K. Ramsey, was held captive for seven years, most of the other 15 employees for five years. We believe there is general agreement that this amendment should be enacted. Last year, bills to provide such a benefit to both military and civilian personnel were introduced. The bill for military personnel was enacted as P.L. 92-596. The amendment for civilian employees was incorporated in H.R. 12602 which was passed by the House on June 19, 1972 but was not considered by the Senate before its adjournment. H.R. 1284, the current bill, is identical to H.R. 12602 of last year. It contains some other leave amendments which were opposed last year by the Civil Service Commission and which we understand the Commission plans to oppose again this year.

The Department believes it important from the standpoint of equity to provide comparable benefits to civilian and military personnel who were captured or in a missing status during the recent conflict. Since the leave amendment has been enacted for military personnel, this makes it urgent that a comparable benefit that would be provided by section 7 of H.R. 1284 be enacted promptly. Accordingly, in order to avoid further delays, we recommend that you make this amendment the subject of a separate bill so that it may be acted upon promptly.

The other provisions of H.R. 1284 would make additional technical changes in the portions of title 5 governing leave and the Department wishes to defer to the views of the Civil Service Commission on those matters.

The Department has been informed by the Office of Management and Budget that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

MARSHALL WRIGHT,  
*Assistant Secretary for Congressional Relations.*



EXECUTIVE OFFICE OF THE PRESIDENT,  
OFFICE OF MANAGEMENT AND BUDGET,  
*Washington, D.C., June 28, 1973.*

Hon. THADDEUS J. DULSKI,  
*Chairman, Committee on Post Office and Civil Service, House of Representatives, Cannon House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to the Committee's request for the views of this Office on H.R. 1284, "To amend title 5, United States Code, to improve the administration of the leave system for Federal employees."

H.R. 1284 would authorize payment for leave accrued in the year of separation, over and above the maximum payment permitted under lump-sum law restrictions; would repeal the existing ban on use of annual leave for the first 90 days after appointment, for employees hired for 90 days or longer; would authorize carryover of leave lost through administrative error, exigencies of the public business or sickness; and would authorize payment of leave forfeited by an employee by reason of missing status.

In its report, the Civil Service Commission generally endorses H.R. 1284 but recommends deletion of the provisions concerning restoration of leave lost through exigencies of the service or sickness. The Department of State recommends that section 7, concerning leave lost in missing status, be treated as separate legislation in order to expedite passage of that provision.

We concur with the views expressed by the Civil Service Commission and the Department of State and, accordingly, recommend enactment of H.R. 1284 if it is amended accordingly.

Sincerely,

WILFRED H. ROMMEL,  
*Assistant Director for Legislative Reference.*

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

#### TITLE 5, UNITED STATES CODE

\* \* \* \* \*

#### Subpart D—Pay and Allowances

\* \* \* \* \*

#### CHAPTER 55—PAY ADMINISTRATION

\* \* \* \* \*

# SUBCHAPTER VI—PAYMENT FOR ACCUMULATED AND ACCRUED LEAVE

§ 5551. Lumpsum payment for accumulated and accrued leave on separation

(a) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, who is separated from the service or elects to receive a lump-sum payment for leave under section 5552 of this title, is entitled to receive a lump-sum payment for accumulated and current accrued annual or vacation leave to which he is entitled by statute. The lump-sum payment shall equal the pay the employee or individual would have received had he remained in the service until expiration of the period of the annual or vacation leave, except that it may not exceed pay for a period of annual or vacation leave in excess of 30 days or the number of days carried over to his credit at the beginning of the leave year in which entitlement to payment occurs, whichever is greater. The lump-sum payment is considered pay for taxation purposes only.

(b) The accumulated and current accrued annual leave to which an officer excepted from subchapter I of chapter 63 of this title by section 6301(2)(x)–(xii) of this title, is entitled immediately before the date he is excepted under that section shall be liquidated by a lump-sum payment in accordance with subsection (a) of this section or subchapter VIII of this chapter, except that the payment is—

[(1)] based on the rate of pay which he was receiving immediately before the date on which section 6301(2)(x)–(xii) of this title became applicable to him; and

[(2)] made without regard to the limitation in subsection (a) of this section on the amount of leave compensable.

# SUBCHAPTER VII—PAYMENTS TO MISSING EMPLOYEES

§ 5562. Pay and allowances; continuance while in a missing status; limitations

(a) An employee in a missing status is entitled to receive or have credited to his account, for the period he is in that status, the same pay and allowances to which he was entitled at the beginning of that period or may become entitled thereafter. *Notwithstanding any other provision of law, an employee in a missing status on or after January 1, 1965, is entitled to payment for annual leave which accrued to his account on or after January 1, 1965, but which was forfeited under section 6304 of this title because he was unable to use that leave by virtue of his missing status. Such payment shall be at his rate of basic pay in effect at the time of forfeiture.*

CHAPTER 63—LEAVE

\* \* \* \* \*

SUBCHAPTER I—ANNUAL AND SICK LEAVE

\* \* \* \* \*

§ 6302. General provisions

(a) \* \* \*

\* \* \* \* \*

(f) *An employee who uses excess annual leave credited because of administrative error may elect to refund the amount received for the days of excess leave by lump-sum or installment payments or to have the excess leave carried forward as a charge against later-accruing annual leave, unless repayment is waived under section 5584 of this title.*

\* \* \* \* \*

§ 6303. Annual leave; accrual

(a) \* \* \*

\* \* \* \* \*

(b) Notwithstanding subsection (a) of this section, an employee [is entitled to annual leave under this subchapter only after being currently employed for a continuous period of 90 days under one or more appointments without a break in service. After completing the 90-day period, the employee is entitled to be credited with the leave that would have accrued to him under subsection (a) of this section except for this subsection] *whose current employment is limited to less than 90 days is entitled to annual leave under this subchapter only after being currently employed for a continuous period of 90 days under successive appointments without a break in service.*

\* \* \* \* \*

§ 6304. Annual leave; accumulation

(a) Except as provided by [subsection (b)] *subsections (b) and (d) of this section, annual leave provided by section 6303 of this title, which is not used by an employee, accumulates for use in succeeding years until it totals not more than 30 days at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year.*

\* \* \* \* \*

(d) (1) *Annual leave which is lost by operation of this section because of—*

(A) *administrative error when such error causes a loss of annual leave otherwise accruable after June 30, 1960;*

(B) *exigencies of the public business when such annual leave was scheduled in advance; or*

(C) sickness of the employee when such annual leave was scheduled in advance;  
shall be restored to the employee.

(2) Annual leave restored under paragraph (1) of this subsection which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Civil Service Commission. Leave credited under this paragraph but unused and still available to the employee under the regulations prescribed by the Commission shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

\* \* \* \* \*

